

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

<b>EDGAR MARTIN HURLBURT, Jr.,</b>	:	
	:	
<b>Petitioner</b>	:	<b>CIVIL NO. 1:CV-03-0665</b>
	:	
<b>v.</b>	:	<b>(Judge Rambo)</b>
	:	
<b>KENNETH D. KYLER, <i>et al.</i>,</b>	:	
	:	
<b>Respondents</b>	:	

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<b>EDGAR MARTIN HURLBURT, Jr.,</b>	:	
	:	
<b>Petitioner</b>	:	<b>CIVIL NO. 1:CV-06-0704</b>
	:	
<b>v.</b>	:	<b>(Judge Rambo)</b>
	:	
<b>KENNETH D. KYLER, <i>et al.</i>,</b>	:	
	:	
<b>Respondents</b>	:	

**MEMORANDUM**

**I. Background**

Petitioner, Edgar Martin Hurlburt, Jr., an inmate at the State Correctional Institution in Huntingdon, Pennsylvania, commenced the captioned actions *pro se* by filing petitions for writ of habeas corpus pursuant to the provisions of 28 U.S.C.

§ 2254. Pending in Civil No. 1:CV-06-0704 is Petitioner's motion for leave to proceed *in forma pauperis* (Doc. 2), Petitioner's motion to stay proceedings pending appointment of counsel (Doc. 3), Petitioner's motion for extension of time and to make the record available (Doc. 10), and motion for evidentiary hearing/reconsideration of appointment of counsel (Doc. 11). Pending in Civil No. 1:CV-03-0665 is Petitioner's motion for extension of time and to make the record available (Doc. 58).<sup>1</sup> The Court has reviewed the two cases and concludes that they involve a common Respondent, they arise from a common set of operative facts, and they involve common questions of law. For the reasons outlined below, the Court will direct that the cases be consolidated pursuant to Federal Rule of Civil Procedure 42(a), and the consolidated matter will proceed under Civil No. 1:03-CV-0665, which was the action first filed by Petitioner.

## **II. Discussion**

Under Rule 11 of the Rules Governing § 2254 Habeas Petitions, subject to exceptions not relevant here, the Federal Rules of Civil Procedure apply to § 2254

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<sup>1</sup> The motion for an extension of time was filed under both case numbers (Doc. 58 in Civil No. 1:CV-03-0665 and Doc. 10 in Civil No. 1:CV-06-0704) and seeks a continuance of proceedings in Civil No. 1:CV-06-0704 pending disposition of Civil No. 1:03-0665. The motion also requests the Clerk of Court to make various portions of the record available to the court.

habeas proceedings. *See* Rule 11 of the Rules Governing § 2254 Habeas Petitions, 28 U.S.C. foll. § 2254 (1977). Rule 42(a) of the Federal Rules of Civil Procedure states:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Fed. R. Civ. P. 42(a).

Although both petitions name multiple Respondents, the only appropriate Respondent for the petitions would be the “warden of the facility where the prisoner is being held, not . . . some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Since the same Respondent is involved in both cases, the petitions involve identical parties.

Moreover, both petitions challenge Petitioner’s guilty plea and sentencing on February 16, 1994, in the Snyder County, Pennsylvania, Court of Common Pleas. To obtain relief on the petitions, Petitioner bears the burden of demonstrating that the State court adjudication “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” or “resulted in a decision that was based on an

unreasonable determination of the facts in light of evidence presented in the state court proceeding.” 28 U.S.C. § 2254(d)(1) and (2).

The same plea and sentence are challenged in both of the captioned actions, and the facts and legal standard are identical for both. Further, Petitioner acknowledges that Civil No. 1:06-CV-0704 is duplicative of Civil No. 1:03-CV-0665. (Civil No. 1:03-CV-0665, Doc. 58 at 2.) Consequently, since the actions contain common factors of law and fact, they involve the same parties, and they are duplicative, this court will order the consolidation of the two actions pursuant to Rule 42(a) and will proceed with the consolidated matter under Petitioner’s first filed action, Civil Action No. 1:03-CV-0665. An appropriate order will issue.

s/Sylvia H. Rambo

Sylvia H. Rambo  
United States District Judge

Dated: December 19, 2006.

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	:	
<b>Respondents</b>	:	

**ORDER**

**AND NOW**, in accordance with the foregoing memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) Petitioner's motion for leave to proceed *in forma pauperis* in CIVIL NO. 1:CV-06-0704 (Doc. 2) is **GRANTED** for the purpose of filing the habeas petition.

2) The Clerk of Court is directed to consolidate *Hurlburt v. Kyler*, Civil No. 1:06-CV-0704 into *Hurlburt v. Kyler*, Civil No. 1:03-CV-0665, pursuant to Federal Rule of Civil Procedure 42(a).

3) The Clerk of Court shall **CLOSE** the file in Civil No. 1:06-CV-0704.

4) Petitioner's motion to stay proceedings pending appointment of counsel and Petitioner's motion for evidentiary hearing/reconsideration of appointment of counsel (Docs. 3 and 11, respectively, in Civil No. 1:CV-06-0704), and Petitioner's motion for extension of time and to make the record available (Doc. 10 in Civil No. 1:CV-06-0704 and Doc. 58 in Civil No. 1:CV-03-0665)<sup>2</sup> are **DENIED** as moot.

s/Sylvia H. Rambo

Sylvia H. Rambo

United States District Judge

Dated: December 19, 2006.

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<sup>2</sup> The court notes that the full record has been produced in Civil No. 1:03-CV-0665.